



Department of Energy
Washington, DC 20585

JUN 17 2014

JM CHRONOLOGY
JM RECEIVED 6/18/14
OUT FOR REVIEW 7/7/14
DRB DISCUSSION 7/17/14

MEMORANDUM FOR: INGRID KOLB
DIRECTOR, OFFICE OF MANAGEMENT

THROUGH: KEVIN T. HAGERTY
DIRECTOR, OFFICE OF INFORMATION RESOURCES
OFFICE OF MANAGEMENT

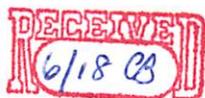
FROM: KENNETH T. VENUTO
DIRECTOR, OFFICE OF HUMAN CAPITAL MANAGEMENT
OFFICE OF THE CHIEF HUMAN CAPITAL OFFICER

SUBJECT: Notice of Intent to Develop DOE P 444.1, *Preventing and Responding to all forms of Violence in the Workplace*

BACKGROUND: The proposed policy is developed in response to the following:

- The President issued a memorandum directing agencies to establish policies and practices that address the effects of domestic violence in the workplace and directed the Office of Personnel Management (OPM) to develop and issue implementation guidance.
- OPM issued guidance that directs agencies to develop or review and update existing policies on domestic violence, sexual assault, and stalking and provides the content for those directives. OPM requires draft policies to be submitted for review by a team from OPM and the Departments of Justice and Health and Human Services by June 7, and final policies submitted by December 6 of this 2013 (see the attached OPM memorandum).
- HC-11 submitted draft policy memorandum and draft guide in February 2014 and OPM provided positive feedback on our documents.
- The Interagency Security Committee (ISC) subsequently issued "Violence in the Federal Workplace: A Guide for Prevention and Response," which is a comprehensive publication that provides comprehensive guidance in developing policies and procedures for addressing domestic violence, sexual assault, and stalking, along with security and other issues associated with or leading up to violence in the Federal workplace.

A workgroup was established with representatives from ED, GC, HC, HSS, MA, the Field Management Council, and BPA (IG opted not to participate) to prepare the risk assessment and determine how best to address the requirement to develop.



Justification Memorandum (Continued)

PURPOSE: The purpose is to satisfy the requirement to have a policy on this subject since one does not exist and to establish expectations that each site would develop or review and update local procedures in order to address all the issues covered in the referenced guidance documents.

JUSTIFICATION: Based on the workgroup's knowledge of existing DOE information and procedures, an appropriate directive does not exist that adequately addresses domestic violence, sexual assault and harassment, and bullying and stalking that occurs on or off site, nor are there any programs or procedures available on how to respond to an employee's request for help regarding domestic violence other than the employee assistance program (EAP). The workgroup concluded that there is no need to issue Department-wide supplemental guidance and that the best way to address this broad subject is to establish an overarching policy that sets out expectations that each site will develop or review and update its local procedures in order to address all the issues covered in the referenced guidance documents.

The expected outcomes are:

- that the offices that administer security, health and safety, human capital, EAP, EEO, diversity and inclusion, employee concerns, ombudsman, legal, whistleblowing, and abuse programs at Headquarters and field sites will cooperatively develop or review and update their local procedures and provide training on an ongoing basis;
- that supervisors and employees will become more aware and sensitive to the impact that domestic violence, sexual assault and harassment, and bullying and stalking that occurs on or off site may have on an employee's productivity, performance, attendance, and behavior; and
- that supervisors will know how to address or assist employees affected by these issues.
- the supporting guide addressed in the Policy Memorandum will provide a template for organizations to use to implement a plan at their locations. The Guide addresses roles and responsibilities for managers, employees, HR offices, Security, Facility, Employee Assistance Program (EAP). The Guide addresses how to address threats within their workplaces.

There are no valid external, consensus or other Standards (e.g., ISO, VPP, etc.) available which can be used in place of this directive.

IMPACT: The proposed directive does not duplicate existing laws, regulations or national standards and it does not create undue burden on the Department.

This is not a subject that lends itself to performance measures because DOE cannot control activities outside the workplace. However, misconduct off site that has a nexus to an employee's duties and responsibilities or adversely affects another employee's ability to perform or on-site misconduct is subject to the Standards of Conduct, Federal ethics laws, and disciplinary action.

Justification Memorandum (Continued)

DOE is establishing a data base of MSPB appeal case decisions to track the decisions, but it will not include data on disciplinary actions taken against perpetrators that is not appealable to the MSPB. Data are not collected on victims of domestic violence or related behaviors who seek EAP counseling and there is no plan to do so because of privacy issues. However, data are collected on employee reports of security concerns and complaints of sexual assault or harassment, bullying, whistleblowing, and abuse that are reported to the applicable office.

The workgroup does not expect a significant change in the number of complaints as a result of issuance of the policy; however, there may be a slight increase in the number of complaints if employees feel more comfortable in reporting such issues as a result of the establishment or update of local procedures and awareness/sensitivity training.

Because the Guide will be comprehensive, local procedures that need updating shouldn't take much time; however, for a new workgroup to convene and develop a procedures document could take several hours. Small site offices are expected to adopt the procedures developed by their servicing offices. Including this subject in employee orientations and during lunchtime seminars or other mediums is not expected to take any additional time or expense.

WRITER: Beau Newman: 6-8585.

OPI/OPI CONTACT: HC: Jennifer Ackerman: 6-3860.

Ingrid Kolb, Director, Office of Management (MA-1):

Concur: [Signature] Nonconcur: _____ Date: 7-16-14

Unless determined otherwise by the Directives Review Board (DRB), writers will have up to 60 days in which to develop their first draft and submit to the Office of Information Resources, MA-90

*HC must submit a separate SM
The guide referenced in this memo.
Also, HC + AU should coordinate on the development of any future guidance on workplace violence.*

| <u>Standard Schedule for Directives Development</u> | <u>Days</u> |
|---|---------------|
| Draft Development | Up to 60 days |
| Review and Comment (RevCom) | 30 |
| Comment Resolution | 30 |
| Final Review | 30 |
| Total | 150 |

NOTE: POLICIES FOLLOW THE EXPEDITED PROCESS.
Beben 7/17/2014

Justification Memorandum (Continued)

Attachments:

- Office of Personnel Management Memorandum**
- Risk Identification and Assessment Form**
- Draft DOE P444.1, Preventing and Responding
To all forms of Violence in the Workplace**

Risk Identification and Assessment

(Final 6/18/13)

Preventing and Responding to all forms of Violence in the Workplace

| Risk | Probability | Impact | Risk Level |
|--|-------------|--------|-------------|
| People | | | |
| 1. A member of the workforce or visitor may be the victim of domestic violence, sexual assault or harassment, or stalking on or off site | Possible | Medium | Significant |
| 2. A member of the workforce or visitor may be the perpetrator of domestic violence, sexual assault or harassment, or stalking on or off site | Possible | Medium | Significant |
| 3. An employee's(s') productivity, behavior, and health may be adversely impacted as a result of any of these issues | Likely | Medium | Significant |
| Mission | | | |
| 4. Employee(s) is unable to complete deliverables on time | Likely | Medium | Significant |
| Assets | NA | NA | NA |
| Financial | | | |
| 5. Cost for EAP services that are not provided on a per capita basis | Unlikely | Low | Minor |
| 6. Cost to conduct an internal investigation and take disciplinary action, if warranted | Likely | Medium | Moderate |
| Customer and Public Trust | NA | NA | NA |

Gap Analysis of Existing Risks and Controls

| | |
|--|--|
| Laws | <ul style="list-style-type: none"> • 5 U.S.C. 7901 (enables each agency to establish a health service program to promote and maintain the physical and mental fitness of employees) |
| External Regulation or Other Authority | <ul style="list-style-type: none"> • President’s Memorandum “Establishing Policies Addressing Domestic Violence in the Federal Workplace” dated April 18, 2012 • OPM’s <i>Guidance for Agency-Specific Domestic Violence, Sexual Assault, and Stalking Policies</i> dated February 2012 • Interagency Security Committee’s (ISC’s) guidance <i>Violence in the Federal Workplace</i> dated April 2013 |
| DOE Regulation | <ul style="list-style-type: none"> • NA |
| DOE Orders | <ul style="list-style-type: none"> • DOE O 341.1, Federal Employee Health Services • DOE O 333.1, Administering Workforce Discipline |
| Contract Controls | <ul style="list-style-type: none"> • NA |
| External Assessments | <ul style="list-style-type: none"> • <i>(See the footnotes in OPM’s guidance document).</i> |

Risk Mitigation Techniques

| Risk Assessment for Preventing and Responding to all forms of Violence in the Workplace | | | | | |
|--|-------------|---|--|---|---|
| Risk/Opportunity | Risk Level | Potential Cost/Benefit | External Control(s) | Proposed Mitigation Technique | Internal Control (if needed) |
| 1. An employee or visitor may be the victim of domestic violence, sexual assault or harassment, or stalking on or off site | Significant | May avoid an employee(s) from being harmed or adversely impacted | 1) Presidential memo 2) OPM guidance 3) ISC guidance | Each site establish a local SOP if one doesn't already exist; if it does, review/update it in light of the guidance | DOE policy that sets out expectations for utilizing the guidance to develop or review and update local procedures that address this subject |
| 2. An employee or visitor may be the perpetrator of domestic violence, sexual assault or harassment, or stalking on or off site | Significant | Cost to investigate and take disciplinary action or contact local law enforcement | Same as 1 | Same as 1 | Same as 1; DOE O 333.1, Administering Workforce Discipline |
| 3. An employee's(s') productivity, behavior, and health may be adversely impacted as a result of any of these issues | Significant | May avoid a loss of productivity and embarrassment to the victim | Same as 1 | Same as 1 | Same as 1 |
| 4. Employee(s) is unable to complete deliverables on time | Significant | Mission would not be impacted | Same as 1 | Same as 1 | Same as 1 |
| 5. Cost for EAP services that are not provided on a per capita basis | Minor | Since most EAP services are either provided at no additional cost (HQs & BPA | Same as 1 | For program offices that have employees that that don't have | Same as 1 |

| | | | | | | |
|---|----------|--|-----------|---|-----------|-----------|
| 6. Cost to conduct an internal investigation and take disciplinary action, if warranted | Moderate | <p>HQs) or prepaid based on the number of employees serviced, only sites that don't have those services will incur costs normally on an hourly basis</p> <p>Avoid the costs associated with an investigation, staff time to address the issue(s), and possible turnover in personnel</p> | Same as 1 | <p>EAP services available or under contract, consider contracting for them when funds are available</p> | Same as 1 | Same as 1 |
|---|----------|--|-----------|---|-----------|-----------|

References

Risk/Opportunity Categories

- People – Risks that affect the individual well being.
- Mission – Risks that impede the ability of the department or offices to accomplish their mission.
- Assets – Risks that impact federal land, buildings, facilities, equipment, etc.
- Financial – Risks that may incur costs or obligations outside of DOE’s control.
- Customer and Public Trust – Risks that affect the trust and political environment around DOE.

Probability Ratings

- Rare – even without controls in place, it is nearly certain that event would not occur
- Unlikely – without controls in place, it is unlikely the event would occur
- Possible – without controls in place, there is an even (50/50) probability that the event will occur
- Likely – without controls in place, the event is more likely than not to occur
- Certain – without controls in place, the event will occur

Impact Ratings

| Rating | Risk | Opportunity |
|------------|--|--|
| Negligible | Events of this type have very little short-term or long-term impact and whatever went wrong can be easily and quickly corrected with little effect on people, mission, assets, finances, or stakeholder trust. | A benefit with little or no improvement of operations or utilization of resources. |
| Low | Events of this type may have a moderate impact in the short term, but can be easily and quickly corrected with no long term consequences. | A benefit with minor improvement of operations or utilization of resources. |
| Medium | Events of this type have a significant impact in the short term and the actions needed to recover from them may take significant time and resources. | A benefit with somewhat major improvement of operations or utilization of resources. |
| High | Events of this type are catastrophic and result in long-term impacts that significantly affect the ability of the Department to complete its mission. | A benefit with major improvement of operations or utilization of resources. |

Risk Level Ratings

| | | Impact | | | |
|-------------|----------|------------|----------|-------------|-------------|
| | | Negligible | Low | Medium | High |
| Probability | Certain | Minor | Moderate | Extreme | Extreme |
| | Likely | Minor | Moderate | Significant | Extreme |
| | Possible | Minor | Moderate | Significant | Extreme |
| | Unlikely | Minor | Minor | Moderate | Significant |
| | Rare | Minor | Minor | Minor | Moderate |

Risk Mitigation Options and Guidance

- Acceptance
- Monitoring
- Mitigation
- Avoidance

| Unmitigated Risk / Strategy | Extreme | Significant | Moderate | Minor |
|-----------------------------|---|--|---|---|
| Acceptance | <ul style="list-style-type: none"> • Not Appropriate | <ul style="list-style-type: none"> • Not Appropriate | <ul style="list-style-type: none"> • Not Appropriate | <ul style="list-style-type: none"> • Risks can be handled through performance feedback and accountability |
| Monitoring | <ul style="list-style-type: none"> • Mandatory Contractor independent assessments • Federal oversight with a mandatory periodicity • Mandatory, periodic reporting | <ul style="list-style-type: none"> • Mandatory Contractor Self-assessments with a minimum periodicity • Federal oversight with a periodicity that is based on performance • Mandatory, periodic reporting | <ul style="list-style-type: none"> • Limited Federal oversight based on performance • Mandatory reporting of threshold events | <ul style="list-style-type: none"> • Federal oversight on a for-cause basis • Standard performance evaluation processes |
| Mitigation | <ul style="list-style-type: none"> • Federal approvals of individual transactions • Detailed performance or process requirements • Detailed design requirements | <ul style="list-style-type: none"> • Federal approvals of systems and programs • Detailed performance or process requirements • Detailed design requirements | <ul style="list-style-type: none"> • Detailed performance requirements | <ul style="list-style-type: none"> • General Performance Requirements |
| Avoidance | <ul style="list-style-type: none"> • Prohibition of activities or operations | <ul style="list-style-type: none"> • Prohibition of activities or operations | <ul style="list-style-type: none"> • Prohibition of activities or operations | <ul style="list-style-type: none"> • Guidance |



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

FEB - 8 2013

The Director

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

From:

John Berry
Director

Subject:

Government-wide Guidance to Address the Effects of Domestic Violence, Sexual Assault, and Stalking on the Federal Workforce

On April 18, 2012, the President issued a Memorandum on "Establishing Policies for Addressing Domestic Violence in the Federal Workforce." The Memorandum noted that it is the policy of the Federal Government to promote the health and safety of its employees by acting to prevent the impact of domestic violence in the workplace, and by providing support and assistance to Federal employees whose working lives are affected by such violence. The President directed me, as the Director of the Office of Personnel Management (OPM), to issue guidance to agencies on the content of agency-specific policies to address the effects of domestic violence in the workplace, in consultation with the Attorney General, the Secretary of Health and Human Services (HHS), the Secretary of Labor, and the Secretary of Homeland Security. The attached guidance is the product of the efforts of an interagency working group that included the agencies designated by the President, along with members from the General Services Administration and the Department of Defense. The guidance is designed to give agencies the flexibility to tailor their own individual policies to specific agency practices and culture.

In accordance with the Presidential Memorandum, **within 120 days** from the date of this memo, each agency shall develop or modify, as appropriate, an agency-specific policy for addressing the effects of domestic violence, sexual assault, and stalking on members of its workforce, consistent with the new guidance. Each agency must submit the draft policy to OPM for review. Each agency will then issue a final agency-specific policy **within 180 days** after submission of the draft policy to OPM.

6-7-13

12-6-13

To assist agencies in developing their policies over the next several months OPM, in partnership with the Department of Justice (DOJ) and HHS, will offer a series of webinars. Topics will include the impact of domestic and sexual violence on the workplace, the role of employers when responding to domestic violence, sexual assault, and/or stalking in the workplace, and the critical components of a workplace response.

The OPM guidance team, including our partners at DOJ and HHS will be available to help agencies as they develop these important policies. Contacts for submission of your policies within 120 days from the date of this memo and/or questions or requests for assistance may be directed to Ingrid Burford at Ingrid.burford@opm.gov or 202-606-0416, Alexis Adams at Alexis.adams-shorter@opm.gov or 202-606-1865, or Hope Hanner-Bailey at hope.hanner-bailey@opm.gov or 202-606-2655.

CC: Chief Human Capital Officers